



POLICE DEPARTMENT

May 12, 2011

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Erlene Wiltshire  
Tax Registry No. 900725  
75 Precinct  
Disciplinary Case No. 84323/08 (2008-580)  
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The above-named member of the Department appeared before the Court on March 15, 2011, charged with the following:

1. Said Police Officer Erlene Wiltshire, assigned to the 75th Precinct, while on-duty on February 6, 2007, at approximately 0000 hours (midnight), while inside the 75th Precinct stationhouse, did wrongfully abuse her authority as a member of the New York City Police Department in that she conducted a strip search of Ms. **Person A** outside of Department guidelines, in that Police Officer Wiltshire did not receive approval of the Desk Officer of the 75th Precinct prior to conducting the search and did not have reasonable suspicion that the person who was strip searched had weapons, contraband or evidence concealed upon her person or clothing, or that the person strip searched was arrested for a violent crime or had a history of violence. (*As amended*)

P.G. 208-05 – ARREST - GENERAL SEARCH GUIDELINES  
P.G. 203-10, Page 1, Paragraph 4 – Conduct Prejudicial<sup>1</sup>

2. Said Police Officer Erlene Wiltshire, assigned as aforesaid, at the time, date and location set forth in Specification One, did wrongfully abuse her authority as a member of the New York City Police Department, in that she cond[uc]ted a strip search of Ms. **Person A** and thereafter failed and neglected to ensure such information was entered in the Command Log, the OLBS Arrest Worksheet, and/or the Arrest Report Supplement. (*As amended*)

P.G. 208-05 ARREST - GENERAL SEARCH GUIDELINES  
P.G. 203-10, Page 1, Paragraph 4 – Conduct Prejudicial

<sup>1</sup> The conduct-prejudicial section of the Patrol Guide is contained in Paragraph 5, not 4, of PG § 203-10.

3. Said Police Officer Erlene Wiltshire, assigned as aforesaid, at the time, date and location set forth in Specification One, while conducting a strip search of Ms. Person A Person A did wrongfully use force, in that Police Officer Wiltshire used her hands to press against the breasts of Ms. Person A causing an abrasion and/or bruise to Ms. Person A left breast. (*As amended*)

P.G. 203-11 USE OF FORCE

4. Said Police Officer Erl[e]ne Wiltshire, assigned as aforesaid, at the time, date and location set forth in Specification One, did wrongfully engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that while cond[uc]ting a strip search of Ms. Person A Person A Police Officer Wiltshire intentionally, and for no legitimate purpose, forcibly touched the sexual or other intimate parts of Ms. Person A (*As amended*)

P.G. 203-11 -- USE OF FORCE

The Department was represented by Adam Sheldon, Esq., Department Advocate's Office, and Laura Edidin, Esq., Civilian Complaint Review Board (CCRB). Respondent was represented by John Tynan, Esq.

Respondent, through counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty of Specification Nos. 1 and 2, and Not Guilty of Specification Nos. 3 and 4.



SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department called Sergeant Robert Fernandez as a witness. It also presented the CCRB interviews of Person A Person A and Person B

Sergeant Robert Fernandez

Fernandez had been a member of the Department since 1995. He was assigned to the 75 Precinct. He was working a midnight tour beginning on February 5, 2007, and continuing into the next day. He was assigned that day as the field training supervisor, working with Police Officers Naranjo and Napolitano. Both of these officers were male.

Fernandez testified that he and the two officers were patrolling in a van when they observed a vehicle with a broken tail light. They checked the documents of the driver, Person A Person A a female. A check of Person A's documents revealed that her driver license was suspended, and Fernandez directed that she be arrested. Person A was compliant when directed out of her vehicle and when Naranjo frisked her. Naranjo was designated the arresting officer.

Person A was transported to the station house and brought before the desk (see Department's Exhibit [DX] 5, command log entry). There, because it is "preferred," but not required, for a female prisoner to be searched by a female member, Fernandez asked Respondent, who was by the desk, to "do me a favor and search the prisoner." The search Fernandez had in mind was a "procedural search" to take place in front of the desk. The prisoner's jacket or sweater would be removed, her pockets emptied, and her belongings inventoried. A "pat down" of her remaining clothing would take place, "just looking for

objects.” This would include running the hands on the chest. Fernandez did not ask Respondent to conduct a strip search.

Fernandez stated that one could not see the holding cells from behind the desk of the 75 Precinct station house.

On cross-examination, Fernandez testified that after Person A was arrested at the scene, she was subjected to a “search” that was more intrusive than a “frisk.” The officers placed their hands in her pockets and ran their hands down her legs. Fernandez did not recall if the officers “check[ed] behind a bra or anything like that that may have been form fitting to her body.”

Person A was brought before the desk a little after 2330 hours. He believed Respondent was working a 4x12 tour, so her sign-out time was 2335 or 2340.

Fernandez testified that there were “single cells” in the cell area of the 75 Precinct station house, meaning that they were individual cells that could hold a maximum of two individuals. The view between the male and female cells was blocked. Fernandez did not see Respondent lead Person A back toward the cells. He denied that it would have been fair for Respondent “to assume” that because he asked a female officer to search a female prisoner, “that search was to be conducted in a more private place than in front of the desk at a time between tours.”

Fernandez denied that the search he “implied for” Respondent to do entailed searching the prisoner “with her hands on her breasts around her whole body in front of the desk.” Rather, the searching officer should have his “hands straight,” placing the “palm” of the officer’s hand on the seam or underwire of the bra. It was permissible to do this in front of the desk, but it would not be inappropriate to do so in the cells.

On re-direct examination, Fernandez testified that the search of a female prisoner’s torso should be done using the side of the officer’s hand, over the clothing.



CCRB Interview of Person A Person A (see DX 1, recording; DX 1a, transcript)

Person A was interviewed on March 14, 2007. The incident took place on February 6, 2007. She was arrested around 11:30 p.m. or 12:00 a.m. Her license had been suspended and she had a warrant.

When Person A was taken to the desk, the sergeant, identified by the complainant as Hernandez, asked a female officer [deemed Respondent for the purpose of this factual summary], "who[se] name they wouldn't give me," to search her. Person A described Respondent as black, 5'11" to 6'0" tall and weighing 300 pounds (this was "fat," not muscle as the interviewer suggested).

Respondent asked where her arresting officer was but the sergeant (i.e., Fernandez) said he did not know. Respondent said "she would leave me right there at the desk," but Fernandez said "she couldn't do that." Respondent "looked me up and down and gave me a look, a funny look. . . . a disgusting look." She then escorted Person A back to the cells to search her.

Respondent patted down Person A and had her remove her sneakers and socks. The officer shook these items out, then asked Person A to lift up her shirt, which she did. She then asked Person A to lift up her bra. Respondent "like went across the line and at the back of my bra." She then "came up behind me and put her hands on my chest and was like grabbing my chest."

Person A asked Respondent what she was doing, and Respondent answered that she was searching her. Person A asked for someone else to be present, but Respondent said it was not possible. Person A "told her she couldn't search me" and to tell Fernandez she was refusing to be searched.

Person A stated that someone asked if Respondent needed assistance. Respondent said no, but Person A said yes. That person walked away, and Person A re-stated her refusal to Respondent. The officer told Person A to "step aside" and handcuffed her. Respondent unbuttoned Person A pants, put her hands inside her underwear between her legs, and began groping her. She was not penetrated. Person A stood there in shock and did not know what to do. She started crying, and screamed, "Can somebody come please? Can somebody help?"

A supervisor and three or four other officers came. The supervisor asked what happened, and when Person A told him, "like he made a face." Person A pants were still unbuttoned and unzipped. Respondent "backed away," and the supervisor asked for someone to "buckle" Person A's pants. Respondent un-handcuffed Person A and the prisoner re-buttoned her pants. The supervisor instructed another female officer to search her, but Respondent laughed and said she was going to "stand right here and watch." Although the second female officer quietly asked Respondent, "Can you just step aside for a moment and let me search her?," Respondent stayed and laughed. The second officer barely touched Person A who was still crying. This officer patted her down, and had her bend over and cough.

A male officer allowed Person A to make a phone call, and she called her father. As Person A started telling him what happened, the officer rushed her off the phone, saying she could tell her father later. When the officer returned Person A to the cell, there was a female prisoner a few cells away that started screaming, "Yeah, I know. I heard her calling you." This other female said her name was Person B and gave Person A her address. The officer told the other prisoner to mind her own business and moved her away from Person A. There was concrete between the cells, so one could not see between them.



The supervisor came to Person A cell with a male and a female, both dressed in plain clothes. They went to an office and Person A told them what happened. She wanted to file a "report" against Respondent, but the supervisor told her she could do so later. "[H]e didn't never do it," however. He asked if she wanted to go to the hospital, and she said she wanted her father. The supervisor said that was not possible at the moment, and asked again about the hospital. Person A said she wanted to go, and the sergeant asked, "What for?" Person A responded, "How would you like it if a man put his hands between your legs?" The supervisor understood, saying, "I have a daughter, too." Person A nevertheless, insisted, "I don't care. I'm the one that was violated. How would you like if it was done to you?"

Emergency Medical Technicians (EMTs) arrived, one black and one white. Fernandez told the white EMT that he should convince Person A not to go to the hospital. The black EMT took her information while the white EMT said, "Why do you want to go? What do you want to go for? I don't think you should go." Nevertheless, she arrived at the hospital. A doctor observed bruises on her chest and "scratches, like [Respondent] like scratched me when I pulled away from her." The doctor also saw that Person A's underwear was ripped.

Person A saw the EMTs while she was in central booking. They asked if she had "the officers' names." She said no, and they wrote them down on a piece of paper. When she arrived home, however, her father showed her a piece of paper given to him by 75 Precinct personnel. The officers' names on that paper were different, and the officers were not involved in the incident. She never got Respondent's name.

Person A agreed that she was filing a civil action.

CCRB Interview of Person B (see DX 2, recording; DX 2a, transcript)

The interview of Person B took place on March 27, 2007. Person B stated that she was in a cell. There was a female officer (i.e., Respondent) searching a “girl” (i.e., Person A) in the next cell. Person A told Respondent that she had touched “her vagina inappropriate” and that “I don’t like the way you touching on me.” Person A was crying and called over another officer. Respondent said that *she* would call another officer, but then handcuffed Person A and “kept on fondling her or whatever.” The other officer thought it was Person B calling so that someone else could hear Person A’s complaints.

Person B did not see any of this; she only heard what was going on. She was yelling out her name and address and was calling for other officers to come.

When the other officers arrived, Person B tried to tell them what occurred. They moved her to a different cell and told her, “Well, we can’t do nothing about that.” Once the officers arrived, “it stopped at that point.” Person B believed that a different officer was “checking” Person A

Respondent’s Case

Respondent testified on her own behalf.

Respondent

Respondent, with the Department since January 1992, had been assigned to the 75 Precinct her entire career. On February 5, 2007, she was working a 1500x2335 tour. At approximately 2335 hours that day, she was on the first floor of the 75 Precinct station house, getting ready to sign out, when Fernandez told her she was the only female officer present and asked her to “search a female.” She was given no further information.



Respondent went to the desk and announced that she was going to search the female (i.e., **Person A**). She took the female from the desk area back to the cells. The procedure Respondent generally used was to bring the arresting officer, but have him stay "closer to the front of the cell area." This way, the arresting officer could see Respondent but not the prisoner, so the procedure would be less intrusive for the prisoner.

Respondent did not recall asking **Person A** to remove any clothing. She told her that she was performing the search for safety reasons, that it would take two minutes at most, and that she was really just doing a favor for someone because she had already signed out.

Respondent's procedure was to search starting with the head and going down. For a woman wearing a loose-fitting shirt, Respondent would place her hand underneath the shirt while wearing a glove. She would put her hand under either the wire or elastic of the bra band, and tell the prisoner to turn around slowly.

Respondent testified that as she searched **Person A** the prisoner became combative. **Person A** began moving her body and screamed, "[Y]ou are not searching me, that is not how the other officer searched me, you are not searching me like I have been searched before that is not how they search." Respondent told her that she did not know how she was searched in the past but that "this is the way I am searching." She told **Person A** that she was taking no pleasure from it, that she was doing the search because a supervisor asked her to and she was the only female officer, and that she just wanted to finish and go home. She tried to search **Person A** again, but the prisoner again resisted.

Respondent testified that the cell attendant and the arresting officer asked her if she was okay. She told them that she was fine and that **Person A** just did not want to be searched. Respondent also explained the situation to the supervisor and told him, "I'm done I can't do this



any more, I am not fighting with you, . . . you don't want to be searched they are going to get someone else to do the search." She left the cell and the supervisor directed another officer to search the prisoner. Respondent stayed in the cell area. Person A did not complain of any injury while Respondent was in the cell with her. Up to this point, Respondent did not believe she was conducting a strip search.

On cross-examination, Respondent admitted that Person A was compliant at the outset of the search. She stated that when conducting a search, the officer is going to touch the breast area and the top of the buttocks. She denied that she touched "Person A's breast with [her] hand against her bare skin" or touched "with [her] hand with a glove her genitals." It was possible that Respondent moved Person A's breast to see if there was anything "hidden underneath or inside."

Respondent did not recall answering affirmatively the following question at her CCRB interview: "And during the course of this search did you ever place a hand on the inside of the person[']s underwear and search her groin area." She agreed, however, that when she searched a female prisoner, she placed her hand "around the waistband" of the prisoner's underwear and had her turn slowly, with Respondent moving her hand slowly "around her waistband." Respondent agreed that it was not standard practice to place her hand "underneath the underwear in between someone's legs," and stated that her hand never went "below that waistband" when searching Person A. When asked by the Advocate, however, "[D]id you hand ever search in between her legs," Respondent answered, "I didn't get that far," because of Person A's combativeness. She denied "mov[ing] any part of her groin in order to discover whether or not there was any contraband inside between her legs." She could not recall ever doing that on prior searches.



Respondent testified that she generally asked the prisoner to “unbuckle their pants if they had a zipper or button.” She added that if she was unable to put her “finger down around the waistband,” she would ask the prisoner to open her pants. She did not recall what kind of clothing Person A was wearing.

Respondent denied removing Person A's shirt or “mov[ing] away her top garments so that you could see . . . her bra and her breasts.” Respondent put her hand underneath the prisoner's shirt, and underneath her bra, but her shirt remained on. Thus, Respondent's hand made contact with the front of her breasts. Respondent admitted that Person A bra became visible to her when she had the prisoner turn. The “top of her underwear” became visible when searching her “groin area.” Respondent did not recall her underwear ripping. She did not know what could have caused the injuries Person A later complained of.

Respondent agreed that Person A asked for a supervisor, but also stated that she told Person A that “the supervisor is going to have to come.” Person A wanted Respondent to tell him that she did not want to be searched by Respondent anymore. Respondent did not recall Person A crying but it was possible.

The supervisor asked Respondent to cease the search.

Upon questioning by the Court, Respondent stated that the search she performed on Person A was different than the search of a prisoner at the station house desk. It had been her experience that female prisoners “can and have put different kinds of contraband in places where normally a male officer would not be able to touch and/or search you.” Contraband could be placed “underneath, your breast and tape something, tape underneath your breast.” That was “why they ask a female officer to go back and search the female.”

FINDINGS AND ANALYSISIntroduction: Did a Strip Search Take Place?

An allegation in each of the four specifications against Respondent is that she wrongfully conducted a strip search of a prisoner, Person A. It was the Department's contention that Respondent strip-searched Person A instead of what she was told to do, a search of a prisoner brought to the station house upon arrest and presented before the desk officer. Respondent contended that the search she performed was proper and not a strip search.

Person A was arrested for driving with a suspended license. The arrest took place on the street and was uneventful. No contraband was found and she was compliant with the officers that arrested her. Respondent was not one of these officers, but was one of the only female Department members in the 75 Precinct station house when Person A was brought before the desk, somewhere around 2330 hours. Respondent was working the third platoon and her tour was about to end. Nevertheless, Fernandez, the supervisor on Person A arrest, told Respondent to search Person A.

Fernandez's understanding was that the search was to be of the scope delineated in Patrol Guide § 208-05 (1)(B), Search at Police Facility. This search is to be performed when a prisoner is brought to the station house after an arrest. A "thorough search of the subject's person and clothing" is to be conducted in order to remove lawful but dangerous items, as well as "weapons, contraband, and evidence" not previously found upon a frisk at the scene. See PG § 208-05 (1)(B)(1). "[O]uter garments such as overcoats, jackets, sweaters, vests, hats, wigs, ties, belts, shoes and socks, handbags, and wallets" are to be removed. The remaining clothing, i.e., shirts, pants, dresses or skirts, "will be examined by grabbing, crushing and squeezing the garments and



by sliding the hands across the body to detect articles that may be underneath or sewn to the clothing.” See PG § 208-05 (1)(B)(2).

Interim Order No. 5, promulgated on February 9, 2009, but incorporating a Finest message of May 13, 2004 (DX 6), defines a strip search for the purposes of the Patrol Guide. It is “any search in which an individual’s undergarments (bra, underwear, etc. . .) and/or private areas are exposed or in which an individual[’s] clothing is removed, lifted, pulled up or pulled down to expose undergarments or private areas.”<sup>2</sup>

Respondent conceded that the search she performed was somewhat broader in scope than the PG § 208-05 (1)(B) search. Respondent testified that she escorted Person A to a prisoner cell that was not viewable from the desk, as to allow for the prisoner’s privacy. Respondent reached under Person A’s shirt with her hand and grabbed onto the band of Person A’s bra with Respondent’s fingers. Respondent told Person A to turn slowly, with Respondent’s fingers remaining in one place on the band, so that Respondent could feel if any items were hidden within or beneath it. Respondent admitted that Person A’s bra was visible to her at this time.

Respondent also testified that in order to search a female prisoner’s waistband, she would either have the prisoner unbuckle, unbutton or unzip her pants, unless Respondent was able to feel the waistband of the prisoner’s underwear with the pants remaining on. In any event, Respondent testified that “the top of [Person A’s] underwear” was visible.

By Respondent’s own testimony, it was established that a strip search took place within the meaning of the Patrol Guide. A female officer is permitted to run her hands over the cups and band of a female prisoner’s bra, over her shirt, to make sure nothing is secreted. *Cf. Case No. 84359/08*, signed Jan. 4, 2010, p. 22 (crediting officer’s account that she felt the bra through

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<sup>2</sup> This quoted portion is taken from the Finest message itself. The portion in the Interim Order has slightly different syntax and punctuation, but is otherwise identical.

the prisoner's shirt); *Case Nos. 76235/00 & 76236/00*, signed June 19, 2001 (pat-down of clothed pelvic area does not constitute strip search). Here, however, in order to search the prisoner's bra, Respondent lifted her shirt and put her hand underneath it, exposing the prisoner's bra. Thus, a strip search occurred within the meaning of the Patrol Guide. See Case No. 85906/09, signed May 12, 2010 (having the prisoner's undergarments exposed to view constituted a strip search).

#### Specification No. 1

The first specification charges that Respondent "wrongfully abuse[d] her authority" by conducting a strip search "outside of Department guidelines." Specifically, it is alleged that Respondent did not receive approval of the desk officer before conducting the strip search, and did not have reasonable suspicion to conduct a strip search (required by the Fourth Amendment and explained in PG § 208-05 [1][C][1]). It was not disputed that the desk officer was not asked to approve a strip search, and that there was no reasonable suspicion. Respondent did not believe she was conducting a strip search, so there would have been no reason for her to request approval or determine reasonable suspicion. Accordingly, Respondent is found Guilty of Specification No. 1.

#### Specification No. 2

The second specification alleges that Respondent conducted a strip search, but neglected to ensure that this fact was noted in the command log (DX 5) or the On Line Booking System Arrest Worksheet (the "On Line" or OLBS, see DX 4). It does not appear that an Arrest Report Supplement (see PG § 208-13) was prepared. As noted, Respondent did not believe she



conducted a strip search, so there would have been no impetus to put that fact in any paperwork. Nevertheless, a strip search was conducted, and Respondent did not have the information placed into the appropriate records. She therefore is Guilty of Specification No. 2.

### Specification No. 3

The third specification alleges that Respondent “wrongfully use[d] force” against Person A during the strip search when she “used her hands to press against the breast of Ms. Person A causing an abrasion and/or bruise to Ms. Person A left breast.” Person A alleged that this occurred while Respondent’s hand was underneath her shirt, searching her bra area. Respondent denied that she grabbed the prisoner’s breasts, stating that she touched the band of her bra, but agreed that she might have touched the breast itself to determine if there was anything underneath.

Person A did not appear at trial, so the Court is left to rely on her CCRB interview (DX 1 & 1a). Although hearsay is admissible in this forum, see Matter of Ayala v. Ward, 170 A.D.2d 235 (1st Dept. 1991), there are significant reasons for caution where, as here, there is a close question of fact on the issue of credibility. Cf. Case No. 77005/01, signed May 27, 2002. In light of Person A’s failure to testify, Respondent’s counsel was unable to explore possible motives to lie, and the Court cannot observe her demeanor or assess the credibility of her account after the test of cross-examination.

This is especially relevant here because counsel stated that Person A filed a civil action in this matter and the case had been settled, with Person A receiving a recovery. The fact that Person A was interested enough to pursue damages, but could not attend a Department trial

examining the propriety of Respondent's conduct as a police officer, is a significant factor in assessing her credibility.

The issue of whether force was used was a close question of fact. Respondent denied grabbing or squeezing Person A breasts. Person B a prisoner in another cell, only heard what was happening; she did not see it with her eyes. Person A alleged that there was a second female officer that came over to complete the search. During this time, Person A claimed, Respondent was standing there, laughing, saying she was going to watch. A supervisor, apparently someone other than Fernandez, also was present, according to Person A. If Person A account is credited, these two additional officers would have been able to give relevant testimony because such a demeanor on Respondent's part would have supported the Department's contention that the search was improper. Yet these other officers were not produced, much less identified, during trial.

The medical file does not conclusively answer whether Respondent used force against Person A. The FDNY Prehospital Care Report reported that Person A stated that she did not have any injuries; FDNY personnel did not find any bruising. The triage report from the hospital reported "no significant wound." On the other hand, the emergency room personnel found an abrasion to the middle of the prisoner's left breast. Nothing more about the abrasion, like redness, bloodiness, etc., is noted. No photograph is in the medical file. The ER personnel rendered a "diagnosis" of sexual assault, but it is unclear how that conclusion was reached, other than on Person A word.

A key question of the incident is exactly how the abrasion occurred. Although the Department stated that Respondent grabbed or squeezed Person A's breasts, causing an abrasion, Person A's CCRB interview is more complicated. She stated that when Respondent



grabbed her breasts, she pulled away: “[T]he doctor said that I had bruises on my chest and scratches, like she like scratched me when I pulled away from her.” Thus, it is unclear whether any wound was caused by Respondent’s use of force against Person A’s breast, or whether she was scratched when she reacted to what Respondent was doing and pulled away.

The Department stated that Person A “made no other allegation of inappropriate touching or inappropriate behavior by any other officers except for the Respondent” (opening statement, p. 7). Their argument was that Person A’s complaint against Respondent was credible because she did not make outlandish claims against numerous officers. While the Department is correct in a limited sense – only Respondent was accused of misconduct relating to bodily contact – Person A complained in her CCRB interview of several instances in which 75 Precinct staff refused to hear her complaints or did not tell her who was really involved, even going so far as to give her and her father different officers’ names.

While Respondent was an interested witness as a matter of law, her account must be balanced against the unexamined account of Person A. In this analysis and under these facts, the Court cannot find that the Department proved it was more likely than not that Respondent wrongfully used force against Person A, injuring her breast. Accordingly, the Court finds her Not Guilty of Specification No. 3.

#### Specification No. 4

In the fourth specification, it is charged that Respondent “intentionally, and for no legitimate purpose, forcibly touched the sexual or other intimate parts of Ms. Person A. The Department represented that this specification referred to the allegation that Respondent grabbed Person A’s breasts and touched her genitals. The specification, therefore, encompasses the



claim in Specification No. 3 that Respondent grabbed Person A breasts illegitimately. The fourth specification also alleges that Respondent opened the prisoner's pants and placed her hand inside her underwear between her legs, touching her genitals.

The specification tracks the first portion of Penal Law § 130.52, Forcible Touching. It does not include the additional statutory element that the touching be done either to degrade or abuse the victim, or for the sexual gratification of the actor.

Respondent admitted that her practice was to have the prisoner open her pants, if necessary to search the waistband of her underwear. Respondent testified, however, that she only touched "the top of her underwear" to search Person A waistband, did not place her hand in between Person A legs, and did not touch her genitals. She denied grabbing Person A breasts, stating that she held on to the prisoner's bra to search that area, and might have lifted the breast to search underneath it.

The Court finds Respondent Not Guilty. While Respondent conducted a strip search of Person A without authority, and improperly conducted a station house search, that is not the same as saying that Respondent's actions were done "for no legitimate purpose." Even a proper station house search will entail some touching of "the sexual or other intimate parts" of an individual, through the clothing. Respondent's actions were erroneous but there was no evidence presented that she was not acting in good faith.

Furthermore, the Court credits Respondent's sworn account as opposed to the unfronted hearsay of Person A. Any touching of Person A's breasts or buttocks, incidental to or done in conjunction with searching the band of her bra or underwear, was not done "for no legitimate purpose."

Accordingly, the Court finds Respondent Not Guilty of Specification No. 4.



PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on January 13, 1992. Information from her personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

Respondent has been found Guilty of conducting a strip search without proper reason or authority. She was instructed by a sergeant to search an arrestee that had been brought to the station house and presented in front of the desk. Instead of conducting a proper station house search, however, Respondent placed her hand underneath the prisoner's shirt and held on to her bra band in order to search the breast area. In doing so, Respondent exposed the prisoner's undergarments, and a strip search was thus conducted.

It was made clear in a 2004 Finest message that a strip search is any search in which the officer exposes the undergarments of the prisoner. It may be that Respondent, a 19-year member of the Department, literally did not get the memo and was unaware of the clarification. Nevertheless, members of the service are responsible for knowing what the Patrol Guide requires and keeping current with it.

In keeping with prior cases concerning searches that became strip searches (see 85906/09, supra and *Case No. 83951/08*, signed May 12, 2010), the Court recommends, as the penalty, that Respondent forfeit 5 vacation days.

Respectfully submitted,



David S. Weisel  
Assistant Deputy Commissioner Trials

**APPROVED**

MAR 27 2012

RAYMOND W. KELLY  
POLICE COMMISSIONER



POLICE DEPARTMENT  
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER ERLENE WILTSHIRE  
TAX REGISTRY NO. 900725  
DISCIPLINARY CASE NO. 84323/08

Respondent received an overall rating of 4.0 “Highly Competent” on her last three annual evaluations in 2008, 2009 and 2010. She has been awarded four medals for Excellent Police Duty and three medals for Meritorious Police Duty. [REDACTED]  
[REDACTED]

Respondent has not been the subject of any prior disciplinary adjudication.

For your consideration.



David S. Weisel  
Assistant Deputy Commissioner – Trials